

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW JERSEY

Carrington Mortgage Services, LLC
Plaintiff.

v.

Marilynn English, et al
Defendant

CIVIL ACTION

Civ.Action No. 23-cv-4187 (EP)(JSA)

Docket No. F-005806-23

NOTICE OF MOTION OF PLAINTIFF, CARRINGTON MORTGAGE
SERVICES, LLC, TO REMAND MATTER TO STATE COURT AND
FOR COUNSEL FEES

TO: Kevin Keane
30 Washington Street
P.O. Box 112
Milbridge, ME 04688
Pro se Defendant

Marilynn English
515 Van Bussum Avenue
Garfield, NJ 07026
Pro se Defendant


Marilynn English
97 Pease Avenue
Township of Verona, NJ 07044
Pro se Defendant

PLEASE TAKE NOTICE that the undersigned attorney for Plaintiff, Carrington Mortgage Services, LLC, will apply to The Honorable Evelyn Padin, U. S. D. J., United States District Court for the District of New Jersey, 50 Walnut Street No. 4015, Newark, New Jersey 07102 , for an Order remanding the matter to state court and awarding counsel fees to Plaintiff.

NOTICE IS HEREBY GIVEN that in support of this motion, Defendant will rely upon the Certification of Counsel. A proposed form of Order is also attached hereto.

NOTICE IS HEREBY GIVEN that in accordance with the provisions of L. Civ. R. 78.1(b), oral argument is requested on the Motion in the event the opposing party files opposition.

KML Law Group, P.C.
A Professional Corporation incorporated in Pennsylvania

BY: 

J. Eric Kishbaugh, Esquire
Attorney for Plaintiff

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ORDER

AND NOW this _____ day of _____, 2023, upon consideration of Plaintiff, Carrington Mortgage Services, LLC, Motion to remand this matter to state court and for counsel fees;

IT IS HEREBY ORDERED AND DECREED that the Plaintiff's Motion is granted. This matter shall be remanded to state court.

Further, just costs and counsel fees are awarded to Plaintiff. Plaintiff shall submit a Certification of Fees within ten (10) days of this Order.

J.

UNITED STATES DISTRICT COURT FOR
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CERTIFICATION OF COUNSEL

I, J. Eric Kishbaugh, Esq., of full age, hereby certify that I am an attorney admitted to practice in this court. I have personal knowledge of the facts set forth herein and make this Certification in support of Plaintiff's motion to remand this case to the Superior Court of New Jersey.

1. This is an action in mortgage foreclosure, with the Plaintiff having filed a Complaint in the Superior Court of New Jersey on May 9, 2023 under Docket No. F-005806-23. On July 3, 2023 Defendant filed an Answer. On August 1, 2023 Defendant filed a Notice of Removal pursuant to 28 U.S.C. § 1446.

2. The property at issue is located in the State of New Jersey at 97 Pease Avenue, Township of Verona, NJ 07044.

3. Defendants contend that they are domiciled at the property address, 97 Pease Avenue, Township of Verona, NJ 07044.

4. The Defendant, or certain of them, entered into a non-purchase money mortgage with America's Wholesale Lender on March 21, 2003. The Note was secured by a Mortgage on the property at 97 Pease Avenue, Township of Verona, NJ 07044.

5. The Mortgage was duly recorded on April 02, 2003, at Book: 8791, Page: 537 in the Clerk's Office of Essex County.

6. The Note and Mortgage were subsequently transferred to Plaintiff.

7. After Defendants defaulted on the Note, Plaintiff filed a Foreclosure Complaint in the Superior Court of New Jersey, Essex County, on May 09, 2023 under docket number F-005806-23.

8. Defendant contends that the United States District Court for the District of New Jersey has jurisdiction based upon the presence of a federal question. There is, however, no federal question presented in an action in mortgage foreclosure.

9. Plaintiff now moves this Court for an Order pursuant to 28 U.S.C. §1447(c) remanding this matter to state court and awarding counsel fees.

10. By Order to Show Cause issued by this court on September 19, 2023, any party seeking to invoke this court's jurisdiction was required to show cause on or before October 3, 2023 why the case should not be remanded. No person or entity seeking to invoke jurisdiction has complied with the Order to Show Cause.

WHEREFORE, the Plaintiff, Carrington Mortgage Services, LLC, respectfully requests that this Court grant the Motion and remand this matter to state court and award counsel fees.

KML Law Group, P.C.
A Professional Corporation incorporated in Pennsylvania

BY: _____



J. Eric Kishbaugh, Esquire
Attorney for Plaintiff

citizenship cases under 28 U.S.C. § 1332.. The underlying matter is a foreclosure action on property located at 97 Pease Avenue, Township of Verona, NJ 07044.

The Defendants entered into a non-purchase money mortgage and note with America's Wholesale Lender on March 21, 2003. The mortgage was then recorded on April 02, 2003, at Book: 8791, Page: 537. The debt is secured by a mortgage on the real property at 97 Pease Avenue, Township of Verona, NJ 07044. The Note and Mortgage were subsequently transferred to Plaintiff.

After Defendants defaulted on the Note, Plaintiff filed a Foreclosure Complaint in the Superior Court of New Jersey, Essex County, on May 09, 2023 under docket number F-005806-23.

Defendants now contend that the District of New Jersey has jurisdiction based upon diversity of citizenship.

Plaintiff now moves this Court for an Order remanding this matter to state court and awarding counsel fees.

II. LEGAL ARGUMENT

A. Defendants have failed to establish the basis for diversity jurisdiction.

Citizenship for an LLC can be determined in one of two ways. First of all, it can be determined under the “persons composing” rule which is applied to partnerships, or § 1332(c)(1) which applies to corporations. Under the persons composing rule, an LLC could be a citizen of as many states as it has members. This is known as “aggregate


citizenship.” It can also be determined by entity citizenship, which deems a corporation to have the citizenship of its state of incorporation and its principal place of business.

Defendants' attempt at removal on the basis of 28 U.S.C. § 1332(a) is deficient under the forum defendant rule. According to the Notice of Removal, Defendants are citizens of the State of New Jersey, and Plaintiff may be a citizen of Delaware, Minnesota and/or Maryland. Assuming the diversity of citizenship and amount in controversy criteria of § 1332(a)(1) were satisfied, Defendants are still barred from removing the action on the basis of diversity jurisdiction under the forum defendant rule. 28 U.S.C. § 1441(b)(2). Section 1441(b)(2) prohibits removal of action based on diversity jurisdiction “if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.” This action, of course, was filed in the state court of New Jersey, the state in which the removing Defendants are domiciled.

III. CONCLUSION

For all the foregoing reasons, it is respectfully requested that this Honorable Court remand this matter to state court.

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BY: 

J. Eric Kishbaugh, Esquire
Attorney for Plaintiff

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CERTIFICATION OF SERVICE

10.09.2023

I hereby certify that on ~~10.04.2023~~, I caused a true and correct copy of Plaintiff,

Carrington Mortgage Services, LLC's, Motion to Remand to State Court and for Counsel Fees to

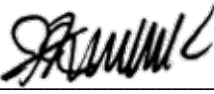
be electronically filed with the Court and electronically served upon the following:

Kevin Keane
30 Washington Street
P.O. Box 112
Milbridge, ME 04688
Pro se Defendant

Marilynn English
515 Van Bussum Avenue
Garfield, NJ 07026
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BY: 
J. Eric Kishbaugh, Esquire
Attorney for Plaintiff